

## Pregnant? Protect Your Job

By Josh Garskof

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Despite laws to protect pregnant workers, discrimination is widespread. Here's how to prevent it from happening to you.

### What's the Law Say?



When Deitra Golson started planning for her second child, she knew she had to do something about her job. She worked in the loan-collection department at a financial-services company and was putting in stressful, 60-plus-hour weeks. "When I told my boss that I was thinking about getting pregnant again, he promised to make my job more manageable," she says. He said he would transfer her to a different department where she could work fewer hours -- just as soon as she had trained a replacement for her current position.

The transfer never happened. Instead, when Golson was three months pregnant, she was fired.

The official reason was that she had failed to make her performance targets for two months in a row. That was true, in fact, but was because Golson had missed a lot of work when she was hospitalized for pregnancy complications. A trainee had filled in and, not surprisingly, hadn't achieved her performance goals. "The company was holding her accountable for someone else's work while she was in the hospital," says her attorney, Lawrence J. Needle.

Golson sued her employer -- Green Tree Financial, in Columbia, South Carolina -- for discrimination. A jury decided in her favor, awarding her \$261,500 in back pay and punitive and compensatory damages, which was upheld on appeal.

### It's Illegal, But . . .

As Green Tree found out the hard way, it's against the law to fire an employee for being pregnant. It's also illegal to demote her, shift her to a less desirable position, or discriminate against her in any other way because of her condition. Still, such treatment happens with alarming frequency, according to employment-law experts. It's impossible to determine just how common pregnancy discrimination is, because only a small percentage of cases go to court and become publicized. But there are indications that the problem is rampant -- and on the rise.

"We get calls from women in all occupations who've been demoted or dismissed after announcing they're pregnant," says Stephanie Bornstein, an attorney at Equal Rights Advocates, a women's law center based in San Francisco. "It seems that when a worker says she's pregnant, a red flag goes up in a lot of managers' heads. Suddenly all they can think about is how much it's going to cost to cover her leave and her medical benefits. And many employers assume that a woman will be less devoted to her job when -- and if -- she returns."

Both private attorneys and the federal agency charged with investigating pregnancy discrimination report mounting caseloads. During the past decade, the number of charges of pregnancy discrimination filed with the Equal Employment Opportunity Commission (EEOC) and state and local agencies was nearly a third higher than the decade before, with more than 4,700 cases recorded in 2002 alone. "Not every charge filed has merit," says EEOC attorney Kam Wong. "But clearly there are employers who are not abiding by the law."

One explanation for the surge in cases may be the tough economy of the last few years. Financial woes have put pressure on managers to cut costs, so they may be more likely to fire pregnant employees rather than absorb the expense of their leaves and medical benefits. And dismissed workers, facing a lean job market, may be more inclined to fight back.

That was certainly the case with Jennifer James, a single mom who lost her job when she was five months pregnant. She had been working at a restaurant in a New York City suburb and, over the course of a year, had been promoted from server to floor supervisor. But a few months after James announced her pregnancy, her job was eliminated. "No one ever came out and said, 'You're fired.' I just wasn't on the schedule anymore," she says. She begged the managers to let her work -- even offering to go back to waiting tables -- but it didn't happen. So James contacted the EEOC, which investigated her claim and decided to sue the company. The lawsuit is still pending.

## What the Law Says

Antidiscrimination suits like James's would have been a lot harder to prosecute 30 years ago, when there were few protections for pregnant workers. Today, there are plenty of laws on the books designed to safeguard an expectant mother's job.

The Pregnancy Discrimination Act, passed in 1978, stipulates that employers can't refuse to hire a woman because she is pregnant, can't fire her for being pregnant, and can't treat her differently in any way because of her pregnancy, says Ellen Bravo, director of 9to5, a national organization, headquartered in Milwaukee, dedicated to helping women in the workplace.

And the Family and Medical Leave Act of 1993 protects a woman's job when she takes up to 12 weeks of parental leave. (Not everyone is covered: Companies are exempt if they have fewer than 50 employees, and employees are only eligible if they've worked for the same employer for a year or more and averaged about 25 hours a week.) Still, it's clear that some employers shirk the law even when workers are protected.

It's impossible to know just how widespread discrimination is, because cases often settle out of court -- with gag orders that prevent women from discussing them. What's more, there are an untold number of pregnancy-related dismissals that are never even challenged. "When you've just given birth, you're at your most vulnerable time," Bravo says. "A lot of people just don't have the resources -- psychological or financial -- to pursue the case."

In addition, many women don't press charges because they're afraid word of a lawsuit will scare off potential future employers. "Many women worry that bringing a case would be career suicide," Bravo says.

## If It Happens to You

Experts say expectant mothers should try to protect their job, particularly if they feel there is a chance that they're being treated differently as a result of their pregnancy. Here are some things you can do.

**If you sense you're being discriminated against, speak up.** Say to the offending employer, "It appears that you're treating me differently because I'm pregnant." Express your concerns in a memo, and ask for a meeting to discuss the situation. "The more you articulate the problem, the harder you make it for your employers to fire you or to defend themselves if they do," Bravo says.

**Pursue your complaint through your company's established procedures.** "Going up the chain of command or talking to Human Resources may resolve the matter, and if it doesn't, it can help fortify your discrimination claim," Wong says. If you're a member of a union, you should make sure to file a formal grievance.

**If you are let go, ask for a written explanation of why you've been fired.** This puts the company on the spot to produce the reasons that they'll have to defend later. You should also ask to see your personnel file -- then photocopy everything that's in it. "It's not unusual for the file to somehow magically change, or for parts of it to vanish somewhere down the road," Boston civil-rights attorney Mark Itzkowitz says.

**Contact a labor attorney or state department of labor.** If you're considering legal action, you need to move quickly. In some states, you have less than six months to get a complaint filed. Don't worry: Speaking to a lawyer or government agency won't lock you into making a formal complaint; it just keeps that door open.

## Advice for Pregnant Working Moms

Most employers obey the law -- not just because they're required to, but because they care about their employees' well-being. Still, pregnant workers can safeguard themselves from potential problems. Here's how.

- Read the employee handbook to determine whether the company offers maternity leave, what the accrued sick-leave policy is, and whether it provides short-term disability insurance.
- Speak privately with coworkers who've had children while working at the company. Find out what sort of leave they received.
- Think about how much leave you want to take, how you can help organize your work while you're gone, and who might cover your job.

- The timing of your announcement is a personal decision. Conventional wisdom holds that it's best to wait until your first trimester is over. But make sure you talk to your boss before your condition is obvious or word has spread through the office grapevine.
- Don't apologize when you tell your boss that you're pregnant. Instead, say, "I have some really great news I want to tell you: I'm having a baby." When you make the announcement, be prepared to discuss the timing and duration of the leave you expect to take and to offer concrete suggestions for covering your work while you're gone.
- Send your boss a thank-you note immediately after the meeting that spells out your verbal agreement. Include details about your due date, anticipated leave, and any specifics that you discussed about how your work will be redistributed among your colleagues.
- Maintain regular contact with your manager while you're on leave -- it helps to make for a smoother transition when you come back.

## **Resources**

If you're thinking of filing a discrimination complaint, these agencies can help.  
Equal Employment Opportunity Commission, [www.eeoc.gov](http://www.eeoc.gov) or 800-669-4000  
U.S. Department of Labor, [www.dol.gov](http://www.dol.gov) or 866-487-9243  
Equal Rights Advocates, [www.equalrights.org](http://www.equalrights.org) or 866-487-9243 or 800-839-4372

## **Related Links:**

**Equal Employment Opportunity Commission**  
**U.S. Department of Labor**  
**Equal Rights Advocates**

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